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In re application of

LaFollette et al.

Serial No. 09/930,539

Filed: August 14, 2001

For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS

DECISION ON
PETITION

This is a response to applicant's response to notification of non-compliant appeal brief. Applicant requests that the authority of the Director of Technology 1700 be invoked. Applicant's request is being considered a PETITION UNDER RULE 37 C.F.R. 1.181(a). The petition requests that the unentered amendments be entered and to recognize that the application is correctly on appeal and the jurisdiction of the Board has been properly invoked.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee). The office issued a notice of defective appeal brief on February 16, 2005. Applicant asserts that the claims have been rejected four times and are proper for appeal. Applicant further asserts that the claims were rejected three times in application 09/037,801. The current application (09/930,539) is a continuation of application 09/037,801.

A review of the current application shows the following. A non-final rejection was mailed out on August 5, 2004. Applicant filed a response on October 14, 2004 to the non-final office action. The Office mailed applicant on October 22, 2004 a notice of informal or non-responsive amendment. Applicant attempted to remedy the situation on November 1, 2004 and November 9, 2004. A notice of non-compliant relating to both of these attempts was mailed on November 23, 2004.

Applicant filed a Notice of Appeal on November 26, 2004 and an Appeal Brief on December 6, 2004. Applicant filed an amendment rectifying the issues raised by the non-compliant notice on November 12, 2004 and was received by the office on November 15, 2004. It appears that a notice of non-compliant amendment mailed in November did not address the amendment received by the Office November 15, 2004. Applicants appeal brief appears to be based upon the amendment received by the Office on November 15, 2004.

In view of the current application being a continuation, the claims have been rejected more than two times and are proper for appeal.

The Petition is **GRANTED**.

The application is being forwarded to the Examiner for consideration of applicants amendment received November 15, 2004 and if the amendment is in compliance to then consider applicants appeal brief and to file an Examiner's answer in response to applicant's appeal brief.



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